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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,890	10/08/1999	BORJE S. ANDERSSON	UTXC:528--1	5425

7590 01/26/2004

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 94, 95, 96, 106-115, 123-132, 138-140, 144-149 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 19.

Claims 98, 116 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language is open to wide interpretation; it is unclear if applicant claims (1) all of water through glacial acetic acid, or (2) a lipid solution or (3) any one of water through a lipid solution, in claim 98. Claim 98 also lacks clear antecedent basis to 97 in that 97 recites solvent vehicle made of (a) and (b), but aqueous secondary solvent-claim 98 recites aqueous solution, so it is not clear if the dipolar solvent, or an acid (not necessarily a dipolar acid) is in solution with (a) and, (a) in the water etc. of claim 98, or if the aqueous solution of 98 refers to the d part of 97, or if the water, etc. of 98 is the acceptable solvent vehicle of the claim 97 preamble. Further, we would not at first glance, consider "lipid solution" of claim 98, to be an aqueous solution, as claim 98 preamble requires.

Claims 97-99, 116-122, 133-134, 141-149, 150 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szoka 5549910 or 5277914 as explained by corbiere-9794117 Smith et al 5006595.

The rejection of record is in essence maintained, as now the "virtually eliminated" need be only 50% and Szoka dialyses and concentrates to provide a concentrate, then obvious to dilute as needed for intended use, as a function of the particular drug and dosage desired.

Corbiere shows this reconstitution of a dosage composition (col.4, lines 28-58), so does Smith (col.3) last paragraph). The particular sizes % and solvent ingredient compositions are within the purview of one in the art to optimize as a result effective parameters chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant's arguments filed 09/25/03 have been fully considered but they are not persuasive. Applicants' arguments are addressed above.

Claims 135-137, 143 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd

January 21, 2004



NEIL S. LEVY
PRIMARY EXAMINER